A **CHIN SIEW CHIN**

v.

LIM HENG CHOO (NO 2)

B HIGH COURT SABAH & SARAWAK, KUCHING
RAVINTHRAN PARAMAGURU JC
[SUIT NO: S-22-232-2007-I]
13 APRIL 2010

C ***CIVIL PROCEDURE:*** *Accounts - Application for account of dealings and transactions - Summary order for accounting - Whether courts can order personal representative of a deceased's partner to render accounts under O. 43 Rules of the High Court 1980*

D ***PARTNERSHIP:*** *Accounts - Death of partner - Dissolution of partnership - Right to account - Whether personal representative of a deceased's partner owes a duty to render accounts for transaction prior to dissolution of partnership*

E The plaintiff was the administratrix of the estate of her late advocate husband. Both the defendant and the deceased were partners of a law firm where the plaintiff was an employee for a period of time. In the previous judgment, the court dismissed the defendant's application to strike out the plaintiff's claim for monies owing to her. This present application was the defendant's F counterclaim under O. 43 of the Rules of the High Court 1980 and s. 30 of the Partnership Act 1961 ('the Act') for the plaintiff to give account for fees collected from all files opened by the deceased from the start of the partnership until his demise. The plaintiff opposed the application on the following grounds: (1) she G was no longer an employee of that firm and (2) the defendant had not requested for accounts and inquiries in the preceding years up to the present time.

Held (dismissing the application with costs):

H **(1)** Under s. 30 of the Act, it is the duty of the partners to render accounts to the legal representatives of deceased's partners and not otherwise. On the facts of this case, the plaintiff was not bound by s. 30 of the Act to render accounts to the defendant. (para 5)

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(2) The aim of rendering accounts is to prevent enrichment by any partner at the expense of the partnership. The plaintiff stepped in as the deceased's partner only after his death, which means that the partnership would have been dissolved by operation of law *via* s. 35 of the Act. For this reason, s. 31 of the Act compels the legal representatives of the deceased to render accounts for private profits in respect of transactions after the dissolution of the partnership. On the facts, there were no findings to suggest that the plaintiff owed a duty to render accounts for transactions that took place prior to the dissolution as (1) she had no knowledge of the accounts and (2) the documents facilitating the taking of accounts were not in her possession. (para 6)

(3) Order for accounts and inquiries cannot be directed to an employee of the firm under s. 30 of the Act. The fact that the plaintiff was an employee of the firm could not be taken into consideration if she were to stand in the capacity of the plaintiff as a partner or personal representative in this application. Due to this and the above reasons, an order for accounts and inquiries under s. 30 of the Act can only be directed to living partners and not their personal representatives as they only come into the loop upon a partner's demise. (para 7)

Case(s) referred to:

Mascom (M) Sdn Bhd & Anor v. Kamawang Enterprise Sdn Bhd & Anor [2006] 4 CLJ 775 CA

Legislation referred to:

Partnership Act 1961, ss. 30, 31, 35
Rules of the High Court 1980, O. 43 rr. 1, 2

For the plaintiff - Shankar Ram (Francis Teron with him); M/s Thomas, Shankar Ram & Co
For the defendant - Anthony Tai (Roger Chin with him); M/s Roger Chin & Co

Reported by Melanie Murthy

JUDGMENT

Ravinthran Paramaguru JC:

[1] This is an application by the defendant under O. 43 of the Rules of High Court 1980 for the following orders:

(i) Chin Siew Chin, an administratrix of the estate of the late Fabian Lim Ann Hoaw, do render the true accounts and full information of all the cases handled by the late Fabian Lim Ann Hoaw during partnership between the period of October 1997 to 18 February 2005 pursuant to s. 30 of the Partnership Act 1961 forthwith.

(ii) The plaintiff be directed:

(a) To furnish a complete list of case files opened in relation to cases handled by the late Fabian Lim Ann Hoaw and Chin Siew Chin from the date when the defendant became a partner in October 1997 until the demise of the late Fabian Lim Ann Hoaw on 18 February 2005;

(b) To furnish a full detail of all the agreed fees, retainers paid and received, legal fees paid and received, legal fees yet to be collected and owing to the firm in respect of case files referred to in para. (a) above;

(c) To render and account showing how the retainers and fees received were disbursed and how the takings of the firm in relation to the files under para. (a) above were distributed between the late Fabian Lim Ann Hoaw and the defendant;

(d) To render a full account showing the amount of money paid to the various creditors of the firm including over-head expenses incurred by the firm;

(e) To render and account showing the salaries paid to and received by the partners of the firm, ie, the late Fabian Lim Ann Hoaw and the defendant;

(f) To pay the Defendant 50% of the nett profit of all the professional fees collected from October 1997 to August, 2005 within 30 days of the account being rendered by the Plaintiff; and

(h) Any other directions that this Honourable Court may deem fit and just to order.

[2] The background facts of this case had been stated in the three previous interlocutory judgments that I delivered. I reproduce here the summary of facts from my previous judgment in the application to recuse me:

> The defendant is an advocate. The plaintiff is the widow of the partner of the defendant. She executed a deed (memorandum of transfer) to transfer her late husband's half share of the firm to the defendant. The plaintiff claimed that in consideration of transferring her late husband's half share of the firm to the defendant, she was promised half of all fees that are collected or will be collected by the law firm in respect of all files opened or retainers received before the "cut-off" date which is the date of the alleged oral agreement. She listed some of the cases for which monies had been paid to the firm but for which she did not receive her share. The defence was that all monies owing to the plaintiff had already been paid and, therefore, there is no basis for the alleged oral agreement that the plaintiff has a ½ share in the collection of fees for all files opened before the "cut-off" date. It is common ground that the plaintiff worked in the law firm as well. The defendant has counterclaimed for an order that the plaintiff account for fees collected from all files opened by her late husband before 18 February 2005.

[3] The relevant point to note in respect of the instant application is that the defendant has counterclaimed for an order that the plaintiff account for fees collected from all files opened by her late husband from the time the partnership started in October 1997 until 18 February 2005. The basis of the application is s. 30 of the Partnership Act 1961 and O. 43 of the Rules of High Court 1980. The application is opposed by the plaintiff on the principal ground that she had left the employ of the law firm more than five years ago and that she is not in possession of any documents to facilitate the taking of accounts or inquiries. The secondary argument is that there has been no request from the defendant for account and inquiries in all the preceding years from 1997 up to present time.

[4] The present application is made under O. 43 of the Rules of High Court 1980. Order 43 r. 1 provides that:

> (1) Where a writ is indorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has entered an appearance or after the time limited for appearing, apply for an order under this rule.

Rule 2 provides that:

> (1) The Court may, on an application made by summons at any stage of the proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made in Form 80.

Section 30 of the Partnership Act 1961 reads as follows:

> 30. Duty of partners to render accounts, etc.
>
> Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

[5] It is common ground that there was a partnership in existence between the defendant and the late Fabian Wong between 1997 and 2005. Ordinarily, under s. 30, partners are bound to render accounts of all things affecting the partnership. This is a statutory duty. This duty is not affected by the absence of any allegation of fraud (see *Mascom (M) Sdn Bhd & Anor v. Kamawang Enterprise Sdn Bhd & Anor* [2006] 4 CLJ 775). However, in the instant case, the partner in question is the late Fabian Wong who died untimely in 2005. The defendant is seeking the order in question against his widow who is also the administrator of his estate. My reading of s. 30 is that while partners have a duty to render accounts to the legal representatives of deceased partners, the Converse does not apply. Section 30 does not enact that the personal representative of a deceased partner is bound to render accounts. The aim of rendering accounts is to prevent enrichment by any partner at the expense of the partnership. The personal representative would have stepped into the shoes of a deceased partner only after his death which means that the partnership would have been dissolved by operation of law (see s. 35 of the Partnership Act 1961). This is the reason that under s. 31 of the Partnership Act 1961, personal representatives are duty bound to render accounts for private profits in respect of transactions after the dissolution of the partnership. Section 31 reads as follows:

> 31. Accountability of partners for private profits.
>
> (1) Every partner must account to the firm for any benefit derived by him, without the consent of the other partners, from any transaction concerning the partnership or from any use by him of the partnership property, name, or business connection.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

[6] In the premises, there is no duty on the part of the personal representatives to render accounts in respect of a period prior to the dissolution of the partnership. Therefore, there is merit in the submission of the counsel for plaintiff that the plaintiff will not be able to comply with any order made because she has no knowledge of the accounts and is not in possession of the documents that will facilitate the taking of accounts. Counsel for defendant argued that the plaintiff in this case was also an employee of the firm since 1997 and had access to the accounts of the firm. The fact that the plaintiff was also an employee of the firm is not disputed. However, a s. 30 order for account and inquiry cannot be directed at an employee of a firm. It is strictly between partners. The defendant has actually directed this application at the combined role of the plaintiff as the administrator of the estate of her husband and as an employee of the firm at the material time. This is not provided for in s. 30 which envisages that only a partner should be ordered to provide accounts and inquiries to other partners or their legal representatives. The plaintiff herself was not a partner in this case. Even if a personal representative is, for sake of argument, liable to account to other partners under s. 30, the role of the plaintiff as an employee in the firm should not be taken into consideration. The application should stand or fail against the capacity of the plaintiff as a partner or personal representative. However, for reasons I gave earlier, my view is that an order for accounts and inquiries under s. 30 can only be sought from living partners and not their personal representatives for the simple reason that they would have only come into the loop of the partnership's affairs after the death of partner.

[7] For all the above reasons, I dismiss encl. 149 with costs.